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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Federal-State Joint Board on Universal Service)
) CC Docket No. 96-45
Citizens Telephone Company of)
Higginville, Missouri)
Petition for Waiver Of Section 54.301(b))
Local Switching Support Data)
Submission Reporting Date)

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER OF SECTION 54.301(b)

Citizens Telephone Company of Higginville, Missouri (Citizens), by its attorneys, and pursuant to Section 1.3 of the Commission's Rules, hereby petitions the Commission for waiver of the October 1, 2005 filing deadline for local switching support (LSS) data set forth in Section 54.301(b) of the Rules and requests that the Commission direct the Universal Service Administrative Company (USAC) to accept Citizens' data submissions filed on October 11, 2005, with accompanying certification filed on October 12, 2005, as timely.

Citizens is an Eligible Telecommunications Carrier (ETC) in the state of Missouri, and is eligible to receive rural high-cost universal service support as an incumbent local exchange carrier (LEC). Citizens files for high cost support under Exchange Carrier Study Area Code 421865. Citizens is a very small, rural telephone company with approximately 4,100 access lines and only 19 employees. In light of Citizens' small number of employees, Citizens contracts with a telecommunications consulting firm to track the various filing requirements imposed by the Commission in order to ensure that all such requirements are met. This system has worked

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well for Citizens in the past and, as a result, Citizens has met all filing requirements imposed by the Commission except for the recent October 1, 2005, deadline for LSS data.

Pursuant to Section 54.301(b) of the Rules, an incumbent LEC must file certain projected data with USAC by October 1 of each year. Although it is not stated in the Commission's rules if there is a penalty associated with the late filing of this data, USAC has indicated that if the data is not filed by October 1 no local switching support will be provided for the following calendar year, unless a waiver is obtained from the Commission.

Citizens has filed the local switching support data in a timely manner for all past years. However, on October 11, 2005, it was discovered that there was a breakdown in filing procedures and the report was not filed as required before October 1, 2005. When this error was discovered, USAC was contacted immediately and the required data was filed on behalf of Citizens with USAC on October 11, 2005. Citizens filed the certification required by USAC on October 12, 2005.

Section 1.3 of the Commission's rules permits the Commission's rules to be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of public policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

In the instant case, Citizens has implemented a process to ensure compliance with the Commission's filing requirements, including the LSS data filing due on October 1 of each year. Prior to the October 1 filing, this process had proven to be successful, and Citizens had never

before missed a filing deadline. Citizens has reviewed its universal service filing process and it has instituted changes necessary to ensure that all future filing deadlines are met. Specifically, Citizens has implemented a procedure whereby at least two individuals will track required filing deadlines and verify that filings have been prepared and made by the deadline.

Further, Citizens notes that it filed the required data immediately upon discovery of the error and within six (6) business days of the due date. Citizens understands the importance of the Commission's local switching support filing deadline to ensure the orderly administration of local switching support. However, in this case, the submission of Citizens' local switching support projections only six business days late should not significantly disrupt USAC's estimation of the LSS funding requirements for calendar year 2006, or its collection and distribution of local switching support for the year.¹

In contrast, the denial of local switching support to Citizens for an entire year would be a disproportionately excessive penalty for Citizens' error. As an initial matter, Section 54.301 of the Rules does not state that a carrier will receive no local switching support for the calendar year if it fails to file the projected LSS data by October 1. In contrast, Section 54.314(d) of the Rules sets a specific schedule for the filing of the required annual state certifications for rural carriers receiving high cost support and expressly states that a carrier will not receive support for certain quarters of the calendar year if the state certification for that carrier is not filed on or before specific dates. Section 54.903 of the Rules also expressly requires rate of return carriers to make certain filings by certain dates in order to "be eligible for Interstate Common Line

¹ Any disruption to USAC should be further mitigated by the fact that the Commission has extended the date for filing various universal service reports, including the local switching support reports, for carriers impacted by the recent hurricanes. For example, the FCC Forms LSSc and LSSa- Projected LSS data for 2006 payments, is not due until January 26, 2006 for carriers and other entities affected by Hurricane Katrina.

Support.” The absence of any reference to penalties in Section 54.301, especially in light of the specific penalties detailed in other sections, draws into question whether USAC has the authority to deny Citizens all of its local switching support for calendar year 2006 because it failed to submit the projected LSS data before October 1, 2005.

Section 54.702(b) of the Commission’s Rules prohibits USAC from making policy or interpreting unclear provisions of the statute or rules. Further, it specifies that where the Commission’s rules are unclear or where they do not address a specific situation, USAC “shall seek guidance from the Commission.” Accordingly, where, as here, the penalty for not filing data on time is not specified in the Commission’s Rules, USAC must seek and obtain “guidance” from the Commission. Thus, rather than deny all local switching support to Citizens, it appears that USAC must seek guidance from the Commission.

In any event, Citizens should not be denied local switching support for an entire year because it is an excessive penalty, it would frustrate the underlying purpose of universal service and it would not serve the public interest. As a very small, rural company, Citizens relies on universal service support, including local switching support, to provide high quality, ubiquitous, telecommunications service to its customers at reasonable rates. Citizens anticipates that it will receive approximately \$344,600 in local switching support for calendar year 2005 and, based on the data filed on October 11, 2005, it should receive approximately \$423,991 in local switching support for 2006. Local switching support represents approximately 7.6% of Citizens’ total revenues. A revenue loss of 7.6% in 2006 would be extremely onerous and disruptive for a small company like Citizens and it could affect the rates that Citizens charges to customers. Grant of this request is in the public interest as it will ensure the timely receipt of local switching

support payments to Citizens, which will assist in the continued provision of affordable and quality telecommunications services to Citizens' customers.²

Finally, denial of support for the entire year would be an arbitrary and inequitable application of the Commission's rules. In its comments filed in the Commission's proceeding concerning a comprehensive review of universal service fund management, administration and oversight, USAC states that it accepts the true-up adjustment required by Section 54.301(e) if it is late-filed by a carrier "to preclude all support being rescinded..."³ even though these late filings "create additional administrative burden and costs and raise fairness concerns for carriers who meet deadlines."⁴ The language in section 54.301(b) and (e) is essentially the same such that there is no justification based on the language of these rule sections to justify a different treatment of late-filed projected reports pursuant to section 54.301(b) and true-up reports pursuant to section 54.301(e). In addition, there is no justification to treat carriers differently depending on whether the projected report is late or the true-up report is late. In either case, a loss of all support to the carrier has the same detrimental effect.

² On October 27, 2005, the Wireline Competition Bureau granted a waiver of a universal service filing requirement to Citizens Communications and Frontier Communications (Frontier) under similar circumstances namely, Frontier had a longstanding history of submitting timely data; Frontier missed the filing deadline by only a few days and immediately filed the data upon discovery of the error; and loss of universal service support could cause a significant hardship in the rural, insular, high-cost areas served by Frontier. See, Federal-State Joint Board on Universal Service, Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules, CC Docket No. 96-45, DA 05-2829 (rel. October 27, 2005). For the same reasons, Citizens urges the Commission to grant the instant request.

³ Comments of the Universal Service Administrative Company, *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, WC Docket No. 05-195, at 158, filed October 18, 2005.

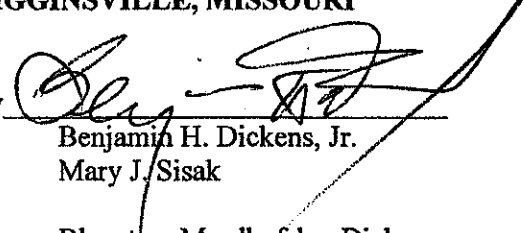
⁴ *Id.*

Accordingly, for good cause shown, Citizens respectfully requests that the Commission waive the October 1, 2005 filing deadline for LSS data set forth in Section 54.301(b) of the Rules and direct USAC to accept Citizens' data submission filed on October 11, 2005, with accompanying certification filed on October 12, 2005, as timely.

Respectfully submitted

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